have been the better course, but no attempt was made by cross-examination to elicit details of the tests, and no evidence was given for the defence alleging that the brakes were in order. Respondent's evidence was to the effect that he did not know the brakes were not in efficient working order. In these circumstances the Magistrate merely had to decide whether he accepted the evidence of the Registrar of Motor Vehicles or not. In his grounds of judgment he states that he did accept that evidence and found as a fact that the brakes were inefficient. There is no merit in this submission therefore.

For the reasons stated therefore I allow this appeal and direct that a finding of guilty be substituted in place of that entered by the Magistrate.

In view of the many mitigating circumstances in this case, which led the Magistrate to acquit the respondent, I impose a nominal fine of $10.

Appeal allowed.

In re TAN Eng SEONG OF CHOP THYE HIN; TAN ENG SEONG
v.
THE RUBBER SUPERVISION LICENSING BOARD FOR THE DISTRICT OF BENTONG, PAHANG.

[Orig. Civ. Juris. (Taylor, J.) September 11, 1950]

[Raub — Originating Motion No. 3 of 1950]

Rubber Supervision Enactment, 1937, ss. 7 and 9 — Specific Relief (Malay States) Ordinance, 1950 — Mandamus to a Licensing Board.

The Rubber Supervision Licensing Board are bound to hear a licensee before they cancel his licence and if they fail to do so an Order of Mandamus will issue to enforce the licensee's rights. Provisions of the Rubber Supervision Enactment construed and explained. Observations on tainted evidence.

Cases referred to:—

(1) *Board of Education v. Rice* (1911) A.C. at p. 182.

(2) *Krishnasamy and ors. v. Butler Madden* (1947) M.L.J. 182.

(3) *Mundell v. Mellor* (1929) S.S.L.R. 152 at p. 161.

APPLICATION for an Order of Mandamus.

A. J. Bostock-Hill for the applicant.

C. M. Sheridan (Federal Counsel) for the respondents.

Taylor, J. : — This is an application for an order of Mandamus directing the Rubber Supervision Licensing Board of Bentong to state their reasons for cancelling a licence.

The applicant is a licensed rubber dealer in the village of Karak where he and his father have carried on business with unblemished reputations for nearly forty years. In May last he received, without notice or warning of any kind, a letter from the Chairman of the Board reading:—

"I have the honour to inform you that your Licence to purchase Rubber No. 10/50 has been cancelled by the Rubber Supervision Licensing Board with effect from the date of receipt of this letter."

The Rubber Supervision Enactment, 1937, provides:—

"7. (i) The Board shall have authority in its discretion to refuse to issue licences issuable by it and to subject such issue to such conditions as it thinks fit and to suspend or cancel such licences.

"(iii) There shall be no appeal by any person affected by any such issue, refusal, suspension or cancellation but any such person shall, if he so desires, be heard by the Board either in person or by an advocate and solicitor of the Supreme Court.

"(iv) In cases of urgency the Licensing Officer may temporarily suspend any licence until the first meeting of the Board thereafter which in any such case, shall be held as soon as practicable.

"8. (i) The Licensing Officer shall have authority in his discretion to refuse to grant licences issuable by him and to subject such issue to such conditions as he thinks fit and to suspend or cancel such licences.

"(ii) Any person aggrieved by such issue, refusal, suspension or cancellation may appeal to the Ruler in Council of the State within thirty days from the date of such issue, refusal, suspension or cancellation, and the decision of the Ruler in Council shall be final.

"9. No suit or proceeding shall be maintainable in any Court of Justice in respect of any refusal, suspension or cancellation referred to in sections 7 and 8."

The applicant's solicitors applied by letter for the grounds of cancellation so that they could advise him as to whether he should apply to be heard by the Board. The Chairman refused to give reasons but offered to hear the applicant. The solicitors replied that unless the applicant were informed of the allegations against him he could not possibly meet or explain them. The Chairman, however, maintained his refusal, referring to section 9 of the Enactment, and after some further correspondence these proceedings were commenced.

The principal argument for the applicant was that unless he knew what he had to meet, he could not be effectively heard so that the refusal of grounds was a denial of justice and amounted to a denial of the statutory right to be heard. Counsel referred to *Board of Education v. Rice*[1] where Lord Loreburn said:—

"Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon

departments or officers of State the duty of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view. Provided this is done, there is no appeal from the determination of the Board under section 7, sub-section 3, of this Act. The Board have, of course, no jurisdiction to decide abstract questions of law, but only to determine actual concrete differences that may arise, and as they arise, between the managers and the local education authority. The Board is in the nature of the arbitral tribunal, and a Court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact. But if the Court is satisfied either that the Board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari."

That statement of principle has often been adopted and applied in England and it is apt to the present case. By a coincidence, even the number of the sub-section does not require alteration.

In my view Chapter VIII of the Specific Relief (Malay States) Ordinance, 1950, which provides for mandatory orders of Court, is in substance a codification of the English law of mandamus in relation to public duties but in point of form we use orders instead of writs.

It was common ground that this statute is administered on the principles of the English Common Law. If ever there were doubt on this point it was resolved by *Krishnasamy v. Butler Madden*[2].

Part C 3 of the second schedule to the Courts Ordinance, 1948 confirms this view.

The first argument raised on behalf of the respondents, was that section 9 of the Rubber Supervision Enactment is an absolute bar to the issue of any mandamus in respect of cancellation of a licence in any circumstances whatever, but later learned Counsel modified this proposition very considerably and conceded that mandamus does lie for the purpose of ensuring that the provisions of the statute are properly carried out by the Board. He submitted, however, that the order applied for ought not to be made because what the Board have done already and what they intend to do in the future are in proper compliance with the statute. This brought the argument to what is, in my view, the central issue in controversy, namely, the question what is the proper construction of section 7.

The view of the Board, as expounded by their Counsel, is that sub-section (i) empowers them to refuse or cancel a licence; that sub-section (iii) denies the party any right of appeal but confers on him a right to be heard by the Board; that the statute peremptorily requires that these things must be done in that order so that, until the licence has been cancelled, the Board have not merely no duty but not even the power to hear the applicant and that this must be so although the only question to be considered at the hearing is whether the licence ought to be cancelled or not. When I said that this seemed to me paradoxical Counsel offered two answers. First he said that the Board have not in fact cancelled the licence; that the letter set out above is not really a cancellation but only a notice to shew cause and that the applicant and his solicitors ought, in the light of the Enactment, so to have construed it. I rejected this argument on the ground that it is in flat contradiction of the plainest evidence. The letter is an absolute cancellation; it was so intended at the time and it has in fact stopped the applicant's business; if the writer had meant the letter to be understood in any other sense he would have added an explanatory paragraph. Secondly, Counsel said that the licence was in fact cancelled but that the Board could proceed in no other way — that is he admitted the paradox but pleaded that the statute itself is paradoxical.

His construction of section 7 (iii) is that there is no appeal from a decision of the Board but that in lieu thereof a right of audience is given to the aggrieved party after, and only after, a decision ruinous to him has been reached in his absence, without any notice whatever to him; that, in effect, the Board are compelled to act in the first place in the most arbitrary manner possible and then to go through the motions of hearing an appeal from their own decision. This is so manifestly contrary to principle, that it cannot be right if any other construction is possible. The view that the legislature meant to create an arbitrary and uncontrollable authority is inconsistent with section 8 (ii) which provides an orthodox right of appeal.

I must say here that in my opinion this Enactment is exceedingly ill-arranged and in consequence difficult for laymen to construe but the provisions themselves are reasonable. The cardinal error was in supposing that the various things are to be done in the order in which they are mentioned. Actually, this statute is not arranged chronologically; manifestly you cannot

cancel a licence before you have granted it, yet cancellation is dealt with in section 7 though the power to grant a licence is not given to the Board until section 11 is reached. Also, the Enactment deals mainly with powers and hardly at all with procedure.

In my opinion the true construction of the Enactment is this.

The Executive are to control the rubber trade by a system of licensing and are empowered to appoint Boards and officers accordingly. The Board may issue licences to buy and store rubber, section 11. The Board may also suspend or cancel licences, section 7. The Licensing Officer (an individual acting alone) may issue certain less important licences, section 8 (ii) and may in case of urgency suspend temporarily, for a minimum period, a dealer's licence, section 7 (iv).

Decisions of the Licensing Officer are appealable to the Ruler in Council, section 8 (ii)

Decisions of the Board as a whole are not appealable to any authority and therefore it is specifically enacted that they must hear the other party, section 7 (iii). This is to remind them of their duty. By necessary implication it means that they must hear him before they cancel, not afterwards.

Decisions of the Board and of the Ruler in Council are not appealable to, or capable of being reviewed by, the Courts, section 9.

I entirely agree that my construction of section 7 (iii) is not an immediately obvious or natural construction. It might even be called forced. But the construction put forward on behalf of the respondents is not only forced but also leads to anomalous and unreasonable results; in this case it has in fact produced a result which in my opinion amounts to a definite injustice. My construction on the other hand is consistent not only with reason and authority but also with other parts of the statute.

The true effect of section 9 is to preclude the Courts from reviewing the decisions of the administrative tribunals on their merits. They are final and not appealable. But this does not wholly exclude the remedies of certiorari and mandamus which never were equivalent to a general right of appeal but are limited to securing that statutory authorities exercise their powers conformably to the statutes which create them and to the general principles of the law. It is a well established canon of construction that the legislature are deemed to have the existing law in mind and to intend fresh statutes to fit in with, and to be construed consistently with, the general body of the law. There is nothing in this Enactment to suggest that the legislature meant to exclude the operation of the Specific Relief Ordinance, the material provisions of which were contained in a statute earlier in date than the Rubber Supervision Enactment.

In my judgment, therefore, the Board have not properly complied with the statute; the applicant is an injured party and this Court has a discretionary power to make an order in the nature of mandamus to enforce his rights.

There remain, however, one or two secondary points.

Mandamus is in all cases discretionary and Counsel for the Board argued that they ought not to be compelled to disclose their reasons to the applicant because, in the present state of emergency, the security of the public, or some members of it, might be imperilled. The answer to this is that the argument is wholly unsupported by evidence. If the Chairman had sworn that the reasons in this particular case were of a specially confidential nature I would have considered his submission, but in the absence of any such affidavit there is nothing to consider.

It was also contended, with some emphasis, that the application, as framed, is only for an order to state reasons; that no such order can be made; that mandamus lies, if at all, only to hear and determine; that the respondents were required to shew cause only against an order to give reasons and that, therefore, an order to hear and determine could not be made on this motion. This is a somewhat technical argument and can, I think, be sufficiently answered by another technicality. An order of mandamus may be made absolute in the first instance or a rule to shew cause may issue. Possibly the correct remedy on this motion would be a rule to shew cause why an order should not be made quashing the purported cancellation of the applicant's licence, and requiring the Board to hear and determine the matter, *de novo,* giving to the applicant a fair opportunity, in the words of Lord Loreburn already cited, to correct or contradict any statement prejudicial to his case which may have been made.

There is, however, a simpler procedure which may possibly be sufficient. Counsel for the Board said at one stage that they were not fighting to avoid disclosure of their reasons but had come to Court to learn what their true duty was. It is possible that having read this judgment they may see their way to follow it, without any formal order, as was suggested by Mr. Justice Deane (as he then was) at the conclusion of his judgment on a not dissimilar motion in *Mundell v. Mellor*[3].

Failing that, the motion may be set down for further consideration in chambers, or for settlement of the formal rule or order, and I will hear argument as to costs.

I desire to add a general observation. Administrative officers not infrequently take the view that when they are not actually a Court they can wholly ignore the Evidence Ordinance. This is a very grave mistake. It is true that they are not strictly bound so that they may, for instance, properly dispense with such matters as formal proof of documents but they must apply the rules against hearsay. The main provisions of the Ordinance are neither arbitrary nor technical. They have been built up through centuries of practical experience and are not obstacles to be evaded but instruments to be used in the scientific ascertainment of truth.

In the course of this case hints were dropped as to possible reasons for the cancellation of a licence. Of all the many reasons why a licence might be cancelled there is one which is, at the present time, more probable than all the others. We have ample judicial knowledge that rubber stealing is rife, especially in the form of illegal tapping, and that the proceeds form one of the principal sources of supply for the almost endemic banditti. If there were no receivers there would be few thieves and it is obvious that many licensed rubber dealers in different parts of the country are in fact engaging in this illegal and subversive traffic. Despite his long umblemished record the applicant may have been induced by greed, or fear, or both, to take part in this traffic and the Board may have some reason to think that he has done so. Manifestly they do not know that he has or they would prosecute him. They may have grounds falling short of legal proof or they may only have suspicion. But there is a very important consideration which might not immediately occur to a layman. There are circumstances, as for instance where the information comes from a tainted source, where the fact that a charge is made against a man may be a reason for thinking that he is innocent.

Banditti commonly use direct methods. They say: — "Participate or....." meaning, participate or be shot. But it is not impossible that a person who had become a bandit agent because he had been terrorised, might hesitate to use violence himself and prefer an indirect method. He might frame a case against a rubber dealer because he had refused to buy stolen rubber. The Board should at least bear this possibility in mind.

Order accordingly.

Ex parte PUBLIC TRUSTEE, FEDERATION OF MALAYA.

[Orig. Civ. Juris. (Taylor, J.) September 13, 1950]

[K. L. — Originating Summons No. 116 of 1950]

Public Trustee Enactment (Cap. 62), s. 6(1).

The Public Trustee Enactment does not authorise the Public Trustee to administer estates of small value without a grant of representation having been extracted.

APPLICATION by the Public Trustee for an appointment of a guardian.

The Public Trustee (M. Neal) in person.

Taylor, J.: — This is an application by the Public Trustee for the appointment of a guardian of the property of one Irene Fitzpatrick, an infant. The summons was adjourned for argument as to whether the Public Trustee has a *locus standi* to make the application.

The father of the infant died intestate; the Public Trustee is administering the estate but without any grant of representation; the question to be decided is whether he is legally empowered to act in the matter. According to the affidavit of Kehar Singh, the Assistant Public Trustee, the solicitors for the widow asked the Public Trustee to make an application for letters of administration. Mr. Neal, the learned Public Trustee who appeared in person to argue the summons, said that this statement was "probably inaccurate." However that may be, what was done is clear. No petition for letters of administration was ever filed. The Public Trustee (not Mr. Neal but his predecessor) "being satisfied that the case came under section 6 of the Public Trustee Enactment" made a declaration that he undertook to administer the estate under that section and the department have in fact administered it and paid out the widow's share; it remains only to deal with the shares of two infant daughters. Section 6 (i) reads: —

"6. (i) Any person who in the opinion of the Public Trustee would be entitled to apply to the Court for an order for the administration by the Court of an estate, the gross capital value whereof is proved to the satisfaction of the Public Trustee to be less than five thousand dollars, may apply to the Public Trustee to administer the estate, and where any such application is made and it appears to the Public Trustee that the persons beneficially entitled are persons of small means, the Public Trustee shall administer the estate, unless he sees good reason for refusing to do so."

The Public Trustee contends that this provision entitles him to general administration without any reference to the Court of any estate under $5,000, of which the beneficiaries are persons of small means, at the request of a person entitled to petition for letters of administration. He conceded that those "small